

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.
CRIMINAL APPEAL NO.197 OF 2004.

- | | |
|--------------------------------|---|
| 1. Mr.Chimanlal Thakershi Modi |] |
| Aged about 76 years, Occ : |] |
| Retired, Karta of Chimanlal |] |
| Thakershi Modi (HUF) |] |
| 2. Mrs.Heena Vijay Modi |] |
| Aged about 41 years, Occ : |] |
| Housewife. |] |
| Both permanently residing at |] |
| 202, Vora Ashish, Pandit |] |
| Solicitor Marg, Malad (West) |] |
| Mumbai - 400 097. |] |
| versus. | |
| 1. The State of Maharashtra |] |
| Through the Senior Inspector |] |
| of Police, E.O.W. G.B.C.B. |] |
| C.I.D., Mumbai. |] |
| 2. John Mohan Bangera |] |
| the Director of Noel |] |
| Pharmaceuticals Ltd. and |] |
| Noel Agritech Ltd. residing |] |
| at Rose, Premier Park |] |

Appellants

Respondents.

Malad(W), Mumbai-64]

Mr.A.P.Mundergi with Mr.Rajendra Sorankar and
Mr.Mukesh Jain for the appellant.

Mr.D.R.More, APP for the State.

Mrs.M.M.Dave for the intervenor.

CORAM : D.G.DESHPANDE, J.

DATED : 31st August 2004.

ORAL ORDER

1. Heard Mr. Mundergi for the appellants,
Mr.D.R.More, learned APP, for the State -
Respondent No.1 and, Mrs.Dave for Respondent
No.2.

2. The appellants have challenged by this
appeal an order dated 31.10.2003 passed by the
Special Court in Misc.Application No.63/2003
filed by the appellants before that court
resulting in dismissal of the said application.
However, by the said impugned order the Special
Judge stayed the execution of the order dated
7.1.2003 passed by Special Judge R.S.Dalvi in

Misc.Application No.706 of 2002. That order was to the effect that upon the applicants issuing a DD/PO for Rs.6,25,000/- plus Rs.6,25,000/- plus all the compensation amounts received from the accused as per clause 2 in both the agreements, drawn in the name of Sr.PI GB CB CID, the seal put on the premises of the applicants shall be removed by the IO. The impugned order is one dated 31.10.2003 but it affects two orders vide order in Misc.Application 63/2003 and order in Misc.Application No.706/2002.

3. This case is arising out of MPID Act. The applicants/appellants are the owners of the premises. They had given their premises on leave and licence basis to the accused in C.R.No.66 of 2002. The accused is Respondent No. 2 before this Court. It appears from the memo of appeal, the accused has not been joined in this appeal. However, Mrs.Dave has been appearing in this appeal right from beginning and she has also filed an application for intervention along with affidavit. Therefore, the presence of the accused was there in the appeal right from the beginning. The appellants to forthwith amend the appeal and to add the name of the accused as

Respondent No.2.

4. The question involved in this case is, whether the premises owned by third party given on leave and licence basis to a firm in which the accused was the partner or director [the company being a limited company] could be attached under the MPID Act. In other words, whether the property acquired by the person i.e. the accused involved in the MPID Act on contractual basis for running their offices and, particularly under written agreements of leave and licence, could be treated as the property of the accused for the purpose of attachment and subsequent sale. Mr.Mundergi, appearing for the appellants, contended that by no stretch of imagination, the property of third persons in such a situation can be treated as the property of the accused and could be put to seal.

5. This important Act was brought into existence for protecting the interest of the depositors who were lured to deposit their valuable savings in a company and who were ultimately cheated by refusing to return or by

avoiding to return the deposit or promised interest on the said deposit. It applies to all the financial establishments defined in Section 2(d) of the said Act. Section 4 gives powers to the Government to attach the properties on default of return of deposits and, it provides that if the government is satisfied upon complaints received from the depositors that any financial establishment has failed to return the deposits etc., then after recording reasons in writing, the government may issue an order by publishing it in the Official Gazette, attaching the money [stress added] or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment.

6. From the wording of Section 4, reproduced above, it is clear that what can be attached is the property of the financial establishment or the property acquired by the financial establishment either its own name or in the name of any other person from out of the deposits collected by the financial establishment.

7. Admittedly, the property which is put under seal is not the property of the accused or of the financial establishment of the accused. It can be said that even prima facie it is not so, though Mr. More, the learned APP, contended that even the leave and licence agreement between the appellants and the accused was malafide one.

8. The facts remain that the accused is the licensee and the appellants are the licensors and, the accused was entitled to use and occupy the premises pursuant to the written agreement between him and the licensors/appellants. The licence is a permission granted to use the premises and, therefore, the accused was using the premises due to the permission granted to him for which he entered into leave and licence agreement right from the beginning with the appellants/licensors and, all those licences came to be renewed from time to time. In these circumstances, this property of the appellants could not have been attached by the Special Court as prima facie it cannot be said that it is the property of the accused in respect of which any order under Section 4 could have been passed even

by the Government.

9. It is a fact that as per the terms of the agreement of leave and licence, the appellants were entitled to receive certain deposit from the accused and monthly compensation for the use and occupation of the premises. Counsel for the accused and the learned APP for the State urged that so far as deposits are concerned, i.e. the deposits received by the appellants from the accused, they are covered by the provisions of MPID Act, in the definition of any amount received under Section 2 i.e. earnest money or security deposit. Therefore, the counsel for the accused and the learned APP urged that the appellants be directed to deposit in the Court the amount of security deposit received by them from the accused. When this matter was heard by me on last occasion the learned APP was directed to verify from the documents in their possession as to how much that amount was ? towards security deposit. According to Mr.Mundergi, the amount of deposit with the accused as security deposit was about Rs.Ten lacs. But according to Mr.More, it is about Rs.Thirteen lacs on the basis of the information given to him by the

Investigating Officer present in court by name Mr.Ranmale, PSI attached to Economic Offences Wing, Crime Branch, CID, Mumbai.

10. Advocate for the accused further contended that even monthly compensation which accused has paid to the appellants/licensors should be ordered to be deposited in the Court. I do not find that such arguments can be accepted. Because the accused till the time they paid compensation to the appellants, have used the premises for their own activities. The compensation as agreed between the parties was the monthly compensation for the use and occupation of the premises and, if the accused have used the premises and then paid the compensation, then the same cannot be recovered from the appellants nor can they be asked to deposit the amount of compensation received by them.

11. The learned advocate for the accused ultimately and lastly submitted that if the appellants are going to deposit Rs.13 lacs in Court and the property is given back to them, then the accused may be permitted to take

possession of all the movables including furniture, electronic items, computers, etc. because the property belongs to them.

12. It is difficult to accept this submission because if all those movables, found in the four galas after un-sealing is done and the panchnama is made, belong to the accused, then they are liable for attachment. Because that is the property of the financial establishment. Considering, therefore, the aforesaid submissions which were the only submissions made before me by both the parties I pass the following order :-

:ORDER:

1. The appeal is allowed.
2. Order dated 31/10/2003 in Misc.Application No.63 of 2003 is quashed. It is directed that Senior Police Inspector, Economic Offences Wing CB CID shall remove the seal of all four galas in the premises numbered as 1A-1; 1A-2; 1B-1 and 1B-2 at Link Road, Andheri, Mumbai and, hand over possession of the same to the appellants.

3. The Senior Police Inspector, either in his presence or under his directions, shall cause a detailed panchanama to be made and prepared of all the movable articles including furnitures, electric items, electronic items; stationery; registered documents as far as practicable in presence of two panchas and give copy thereof at the end i.e. after concluding the panchanama to the accused or their counsel.

4. The accused will be permitted to have their representative present at the time of panchanama is prepared or concluded.

5. Before getting possession from the Sr.P.I., Economic Offences Wing of the aforesaid four premises, the appellants will deposit before the trial Court a sum of Rs.13,00,000/- (Rupees Thirteen Lacs).

6. All the issues raised before this Court whether the premises could be termed as the premises of the accused or the premises of the appellants are kept open and the aforesaid findings are in the nature of prima facie findings only. Similarly, the Issue regarding

custody of amount of deposit is also kept open.

7. Regarding claim of the accused to the movables, to be found in the premises of which inventory and panchanama will be made, the Sr.P.I. will take appropriate decision viz. either he will keep all those articles in his own custody or he may hand over those articles in the custody of Special Court or, he may, if both these are not practicable, hand over those articles to the accused upon such terms and conditions of supratnama as may be fixed by him or about which he may be obtained necessary directions from the Court.

8. If it is decided that the articles, of which panchanama is made, are to be ultimately handed over to the accused, then they will be granted four weeks time from the date of the decision about handing over those articles to the accused and for removing the articles.

9. The Appellants not to sell any of the aforesaid four galas till trial is over.

10. Appeal is disposed of accordingly.

11. Certified copy expedited.

12. Parties to act upon ordinary copy of this order duly authenticated by the Court Sheristedar.

[D.G.DESHPANDE]

31.08.2004

JUDGE .
